

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DENNIS DUANE WEBB,

Plaintiff,

No. C 07-2294 PJH

vs.

**DISMISSAL ORDER**

A. SCHWARZENEGGER, Governor;  
MICHAEL GENEST, Director,  
Department of Finance; CALIFORNIA  
DEPARTMENT OF CORRECTIONS  
AND REHABILITATION; JAMES E.  
TILTON, Acting Secretary, California  
Department of Corrections and  
Rehabilitation; PETER FARBER-  
SZEKRENYI, M.D., Director, Division of  
Correctional Health Care Services;  
ROBERT L. AYERS, JR., Acting  
Warden, San Quentin State Prison;  
KAREN SAYLOR, M.D., Chief Medical  
Officer, San Quentin State Prison; DR.  
WILSON, M.D.; JOEL LOPIN, M.D; C,  
DAVID, M.D., WILLIAM WILLIAMS,  
M.D., C.F. STONE, D.D.S.; AND DOES  
1-18, medical assistants and  
correctional officers,

Defendants.

This is a civil rights case brought by plaintiff Dennis Webb ("Webb"), a prisoner at San Quentin State Prison. On February 6, 2007, Webb filed a complaint in the Marin County Superior Court alleging three claims for equitable and injunctive relief, two under 42 U.S.C. § 1983 and one under the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act. On April 7, 2007, all served defendants filed a notice of removal,

1 and the case was assigned to the Honorable Jeremy Fogel.<sup>1</sup> On May 8, 2007, Judge Fogel  
 2 granted defendants' motion requesting the court screen Webb's complaint under 28 U.S.C.  
 3 § 1915A, and set a briefing schedule on defendants' motion to dismiss the complaint. The  
 4 motion was fully briefed on May 29, 2007, and remained fully briefed and submitted at the  
 5 time of reassignment to the undersigned judge on September 27, 2011.

## 6 DISCUSSION

### 7 A. Standard of Review

8 Federal courts must engage in a preliminary screening of cases in which prisoners  
 9 seek redress from a governmental entity or officer or employee of a governmental entity.  
 10 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and  
 11 dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may  
 12 be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at  
 13 1915A(b)(1),(2).

### 14 B. Plaintiff's Claims

15 Webb alleges three claims for relief. Webb's first and third claims are brought under  
 16 § 1983, and in both claims, he asserts that the defendants named in conjunction with those  
 17 claims were deliberately indifferent to his medical needs in violation of the cruel and  
 18 unusual punishment clause of the Eighth Amendment to the United States Constitution. In  
 19 his second claim, brought under the ADA and Rehabilitation Act, Webb asserts that he is a  
 20 qualified individual under both acts, and that as a result of the defendants' policies and  
 21 practices resulting in inadequate medical care, he has been excluded from recreation and  
 22 yard time, meals, visiting, discipline, telephone, emergency procedures, and other  
 23 programs and services provided by defendants to which he is otherwise qualified.

24 In support of all three claims, Webb states that defendants failed to timely provide  
 25 the prescribed diet and medications necessitated by his various medical conditions, and

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26  
 27 <sup>1</sup>In its April 27, 2007 notice of removal, the California Attorney's General's Office, which  
 28 represents defendants, notes that the California Department of Corrections and Rehabilitation  
 ("CDCR") and Dr. Wilson had not been served, and therefore, that no appearance was made  
 on their behalf.

1 also failed to provide timely and adequate medical treatment, including dental care. Webb  
2 seeks only equitable and injunctive relief with respect to all three claims.

3 Meanwhile, Webb is a class member in three class actions pending before this court,  
4 including *Plata v. Schwarzenegger*, No. C 01-01351 TEH (N.D. Cal. filed 2001), *Armstrong*  
5 *v. Brown*, No. C 94-2307 CW (N.D. Cal. filed 1994), and *Perez v. Cate*, No. C 05-5241  
6 JSW (N.D. Cal. filed 2005).<sup>2</sup> The three class actions involve the same subject matter,  
7 adequacy of medical and dental care, as Webb's claims here.

8 The class in *Plata* includes all current and future California inmates requiring medical  
9 care under the medical care system operated by the CDCR. Plaintiffs claimed that the  
10 CDCR is providing constitutionally deficient medical care in violation of the Eighth  
11 Amendment, and that the current systems and resources cannot properly care for and treat  
12 the prisoners in custody. They sought injunctive relief compelling defendants to  
13 immediately furnish them with constitutionally adequate medical care. The State of  
14 California stipulated to a remedial injunction, with which it failed to comply.

15 A three-judge court was convened,<sup>3</sup> which issued a remedial order requiring the  
16 State to reduce the prison population to 137.5% of the prisons' design capacity within two  
17 years, which, absent compliance through other means, would involve releasing some  
18 prisoners before their full sentences have been served. See *Brown v. Plata*, 131 S. Ct.  
19 1910, 1928 (2011). The State appealed the order of the three-judge court and the  
20 Supreme Court affirmed the remedial order, directing the State to implement the order  
21 "without further delay." *Id.* at 1947.

22 Similarly, the class in *Perez* includes current and future California inmates housed at  
23 one of California's thirty-three state prisons. See *Perez v. Cate*, 632 F.3d 553, 554 (9th Cir.

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25 <sup>2</sup>At the time defendants filed their reply brief on May 29, 2007, Webb was also a  
26 member of fourth pending class action, *Lancaster v. Tilton*, No. C 79-1630 WHA (N.D. Cal.  
27 filed 1979). However, on April 14, 2009, the assigned judge entered an order terminating the  
28 consent decree and the case.

<sup>3</sup> The three-judge court consolidated *Plata* with another federal class action, *Coleman*  
*v. Wilson*, 912 F. Supp. 1282 (E.D. Cal. 1995), which involved a class of prisoner-plaintiffs with  
serious mental disorders.

2011). Plaintiffs claimed that the provision of dental care in California prisons violated the Eighth Amendment. The parties settled the action and entered into a remedial plan which provided, among other things, that plaintiffs would monitor the prison officials' implementation of the plan. *Id.* at 554.

Finally, the class in *Armstrong* includes all present and future California state prisoners and parolees under the care of the CDCR who are qualified individuals under the ADA and section 504 of the Rehabilitation Act, and who have been denied access to programs, services, and activities run by the CDCR and have been confined in or use facilities operated by and under the control of the CDCR. Plaintiffs' ADA and Rehabilitation Act claims concern the accessibility of qualified prisoners to buildings, facilities and programs, including educational, vocational, work furlough and work credit, recreational, visiting, classification, disciplinary and emergency programs.

In their motion before this court, defendants contend that dismissal is required given Webb's membership in the above class actions. Webb opposes the motion, arguing that his individual claims are not being litigated within the boundaries of the class action lawsuits and that the relief that he seeks is different. His primary argument is that he seeks individual relief as opposed to the systemic relief sought in the other class actions.

Having reviewed Webb's complaint and the documents submitted by defendants in conjunction with their request for judicial notice, the court concludes that Webb's current complaint seeking equitable and injunctive relief involves the very same events and same claims being litigated in the above class actions. Individual suits for injunctive and equitable relief from alleged unconstitutional prison conditions cannot be brought where there is a pending class action suit involving the same subject matter. *McNeil v. Guthrie*, 945 F.2d 1163, 1165 (10th Cir. 1991); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (en banc). Individual members of the class, like Webb, "may assert any equitable or declaratory claims they have, but they must do so by urging further actions through the class representative and attorney, including contempt proceedings, or by intervention in the class action." *Id.* For these reasons, dismissal is appropriate because the relief sought by

Webb can be granted only in the class actions. See *Spears v. Johnson*, 859 F.2d 853, 855 (11th Cir. 1988), *vacated in part on other grounds*, 876 F.2d 1485 (11th Cir. 1989); *Gillespie*, 858 F.2d at 1102.

**CONCLUSION**

For the foregoing reasons, defendants' motion is GRANTED, and the complaint is DISMISSED.

**IT IS SO ORDERED.**

Dated: January 19, 2012



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PHYLLIS J. HAMILTON  
United States District Judge